



Guide to Idaho's Labor Laws

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IDAHO COMMERCE & LABOR

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Idaho Commerce & Labor

GUIDE TO IDAHO'S LABOR LAWS

Idaho Commerce & Labor's Wage and Hour Section is responsible for enforcing the State of Idaho's wage and hour laws, which include the state minimum wage and wage payment laws. Effective in 2003, we also administer the licensing provisions of the state farm labor contractor licensing law.

This guide provides general information about federal and state labor laws. It is for informational purposes only and is not a substitute for the law. The federal Fair Labor Standards Act can be found at Title 29 United States Code, Chapter 8. State law regarding minimum wage requirements can be found at Title 44, Chapter 15, Idaho Code; and state law regarding the payment of wages can be found at Title 45, Chapter 6, Idaho Code. The farm labor contractor licensing law may be found at Title 44, Chapter 16, Idaho Code. If legal advice is required, an attorney should be contacted.

MINIMUM WAGE

Unless specifically exempt, all employees subject to the provisions of the Idaho Minimum Wage Law must be paid at least \$5.15 per hour effective September 1, 1997. The federal minimum wage increased to \$5.15 per hour effective the same date.

A "TIPPED EMPLOYEE" means any employee engaged in an occupation in which she/he customarily and regularly receives more than thirty dollars (\$30) a month in tips.

In determining the wage of tipped employees, the amount paid such employee by an employer shall be deemed to be increased on account of tips that are actually received by the employee, but not by an amount in excess of thirty-five percent (35%) of the applicable minimum wage. It shall be the employer's burden to demonstrate the amount of tips actually received by the employee.

Any portion of tips paid to an employee, which is shared with other employees under a tip pooling or similar arrangement, shall not be deemed, for the purpose of this section, to be tips actually received by the employee; therefore, only the portion of tips actually retained by the employee may be counted toward the tip credit.

Idaho Minimum Wage Law is more restrictive than the federal Minimum Wage Law in that it only allows a maximum tip credit of thirty-five percent (35%) of the Idaho minimum wage. Even though the federal law allows the use of a larger "tip credit," only the maximum shown above may be used in Idaho.

The minimum tipped wage in Idaho is \$3.35 per hour effective September 1, 1997.

It is important to note that the Idaho Minimum Wage Law applies to all Idaho employers unless they meet the specific exemptions under *Idaho Code §44-1504*.

Even though businesses come under the exemptions for paying minimum wage by meeting the dollar volume test of the Fair Labor Standards Act, they are still subject to the provisions of the Idaho Minimum Wage Law.

New employees under twenty (20) years of age may be paid \$4.25 per hour during their first ninety (90) consecutive calendar days of employment with an employer.

EXEMPTIONS FROM THE IDAHO MINIMUM WAGE LAW

Idaho's Minimum Wage Law does not apply to any employee employed in a bona fide executive, administrative, or professional capacity; to anyone engaged in domestic service; to any individual employed as an outside salesman; to seasonal employees of a nonprofit camping program; or to any child under the age of sixteen (16) years working part-time or at odd jobs not exceeding four (4) hours per day with any one (1) employer; or any individual employed in agriculture if: such employee is the parent, spouse, child or other member of his employer's immediate family; or such employee is older than sixteen (16) years of age and is employed as a harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been paid on a piece-rate basis in the region of employment, and commutes daily from his permanent residence to the farm on which he is so employed, and has been employed in agriculture less than thirteen (13) weeks during the preceding calendar year; or such employee is sixteen (16) years of age or under and is employed as a harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been paid on a piece-rate basis in the region of employment, and is employed on the same farm as his parent or person standing in place of his parent, and is paid at the same piece-rate basis as employees over the age of sixteen (16) years are paid on the same farm; or such employee is principally engaged in the range production of livestock.

It should be noted that the federal Fair Labor Standards Act does not contain the same exemptions for minimum wage as noted in the Idaho State Exemptions for Minimum Wage. Employers should check with the U.S. Department of Labor before using minimum wage exemptions.

WHO IS COVERED UNDER THE FEDERAL OVERTIME AND MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT (FLSA)

All employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by FLSA. A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and –

- (1) whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or

- (2) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a pre-school; an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
- (3) is an activity of a public agency.

Employees of firms which are not covered enterprises under FLSA still may be subject to its minimum wage, overtime pay and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mail, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce; or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered if (1) their cash wages from one employer are at least \$1,000 in a calendar year (or the amount designated pursuant to an adjustment provision in the Internal Revenue Code), or (2) they work a total of more than eight (8) hours a week for one or more employers.

OVERTIME

In accordance with the FLSA, and except as hereinafter otherwise provided, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for the employment in excess of forty (40) hours at a rate not less than one and one-half (1-1/2) times the employee's regular rate of pay.

Workweek: A workweek is a period of 168 hours during seven (7) consecutive 24-hour periods. It may begin on any day of the week and any hour of the day established by the employer. For the purpose of overtime payment, each workweek stands alone; there can be no averaging of two (2) or more workweeks.

COMPUTING OVERTIME FOR SALARIED EMPLOYEES

Unless specifically exempt under the provisions of the FLSA, salaried employees must be paid time and one-half for all hours worked in excess of forty hours (40) in a workweek.

The following are examples of exemptions which are illustrative, but not all-inclusive. These examples do not define the conditions for each exemption.

FLSA EXEMPTIONS FROM BOTH MINIMUM WAGE AND OVERTIME PAY

- (1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations);
- (2) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- (3) Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
- (4) Casual babysitters and persons employed as companions to the elderly or infirm.

FLSA EXEMPTIONS FROM OVERTIME PAY

- (1) Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts clerks and mechanics servicing autos, trucks, or farm implements who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- (2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
- (3) Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
- (4) Domestic service workers living in the employer’s residence;
- (5) Employees of motion picture theaters; and
- (6) Farm workers.

FLSA PARTIAL EXEMPTIONS FROM OVERTIME PAY

- (1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.
- (2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual seven (7)-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over eight (8) in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.
- (3) Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

For information about the Fair Labor Standards Act and the federal minimum wage, contact:

Northern Idaho - U. S. Department of Labor
ESA, Wage and Hour Division
P. O. Box 1282
Spokane, WA 99210
Phone (509) 353-2793

**Southwestern and
Eastern Idaho -** U. S. Department of Labor
ESA, Wage and Hour Division
1150 N. Curtis Road, Suite 202
Boise, ID 83706
Phone (208) 321-2987, or (503) 326-3057 (Portland, OR)
FAX: (208) 321-2991

CHILD LABOR PROVISIONS

Idaho Child Labor Laws are found under *Idaho Code §44-1301* through *§44-1308*. Violations of the Idaho Child Labor Laws should be brought to the attention of the probation officer or the school trustees in the county where the violations occur.

For businesses that fall under the coverage of the FLSA, the Child Labor Laws are generally enforced by the U.S. Department of Labor. FLSA Child Labor Laws are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under sixteen (16) and list hazardous occupations orders for both farm and non-farm jobs declared by the Secretary of Labor as being too dangerous for minors to perform. Further information on prohibited occupations is available from the U.S. Department of Labor offices listed previously.

LEARNER/APPRENTICE CERTIFICATES

A special certificate allowing employment at sub-minimum wage may be allowed under certain circumstances. This certificate must be obtained from the Director of Idaho Commerce & Labor before a sub-minimum wage can be paid.

IDAHO LAW DOES NOT REQUIRE

1. vacation, holiday, severance, or sick pay;
2. a discharge notice or a reason for discharge;
3. rest periods, breaks, lunch breaks, holidays off, or vacations;
4. premium pay rates for weekends or holidays worked;
5. pay raises or fringe benefits; or
6. a limit on the number of hours an employee can work per day or week for employees sixteen (16) years of age or older.

These items are matters for agreement between the employer and the employee or their authorized representative. If there is any change in a policy that is in effect, the employee must be notified prior to the change.

RECORD KEEPING

Employee records should be kept for a minimum of three years. The records do not have to be kept in any particular form and time clocks need not be used. These records should include:

1. personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age);
2. hour and day when workweek begins;
3. total hours worked each workday and each workweek;
4. total daily or weekly straight time earnings;
5. regular hourly pay rate;
6. total overtime pay for each workweek;
7. deductions from wages;
8. total wages paid each pay period;
9. date of payment of wages and pay period covered.

Hours worked: Employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises, or at any other prescribed place of work. Also included is any additional time that an employee is suffered or permitted to work.

WAGE PAYMENT LAW

Idaho Code §45-606 through §45-617:

1. Upon layoff or termination by either the employer or the employee, all wages due must be paid to the employee the earlier of the next regularly scheduled payday or within ten (10) days of termination, weekends and holidays excluded. If the employee makes a written request for earlier payment of his wages, all wages then due must be paid within forty-eight (48) hours, excluding weekends and holidays. *Idaho Code §45-606.*
2. Unless exempt from the minimum wage requirements of Idaho's Minimum Wage Law, employees who are not being paid on an hourly or salary basis must be paid at least the applicable minimum wage for all hours worked in the pay period immediately preceding layoff or termination from employment. The minimum wage payment shall be made within the same time limitations provided for in *Idaho Code §45-606.*
3. If an employer fails to pay all wages due as required by law, that employer may be subject to penalties in the amount of wages equal to the employee's regular wage rate, as if he rendered service in the manner as last employed, for every day that the employer is in default up to fifteen (15) days, and a maximum of \$750.00. *Idaho Code §45-607.*

4. Every employer shall pay all wages due to its employees at least once during each calendar month on regular paydays designated in advance. The end of a pay period for which payment is made on a regular pay period shall not be more than fifteen (15) days before such regular payday. *Idaho Code §45-608.*
5. If the regular payday falls on a non-workday, payment shall be made on the preceding workday. *Idaho Code §45-608.*
6. No employer shall withhold or divert any portion of an employee's wages unless:
 - a) the employer is required or empowered to do so by state or federal law; or
 - b) the employer has written authorization from the employee for deductions for a lawful purpose. *Idaho Code §45-609.*
7. Employers shall furnish each employee with a written statement of deductions made from his or her wages for each pay period such deductions are made. *Idaho Code §45-609.*
8. Every employer shall notify his or her employees at the time of hire of their rate of pay and regularly scheduled payday. *Idaho Code §45-610.*
9. Every employer shall notify his or her employees of any reduction in their rates of pay prior to the work being performed. *Idaho Code §45-610.*
10. When there is a dispute over the amount of wages due an employee, the employer shall pay the undisputed portion without condition. *Idaho Code §45-611.*
11. The acceptance by an employee of a check for wages when there is any restrictive endorsement written on the check shall not constitute a release with respect to the disputed amount. *Idaho Code §45-611.*
12. Claims for wages filed with Idaho Commerce & Labor are limited by the same dollar amount as the small claims department of the magistrate's division of the district court. *Idaho Code §45-617.*
13. No employer shall discharge an employee or in any manner retaliate against an employee for asserting their rights under the Wage Payment Act and Minimum Wage Law. *Idaho Code §45-613.*
14. It is a misdemeanor criminal offense for an employee to make a false claim for wages. *Idaho Code §45-612.*

Wage claim forms are available at your local Idaho Commerce & Labor office or the Wage and Hour Section of Idaho Commerce & Labor in Boise. If you have any questions regarding the wage payment law, feel free to call any of the Idaho Commerce & Labor offices. For a listing, see our website at: **cl.idaho.gov**.

Questions regarding discrimination due to race, color, handicap, age, sex, national origin, or religion should be addressed to:

Idaho Human Rights Commission
1109 W. Main Street, Suite 400
P.O. Box 83720
Boise, Idaho 83720-0040
Phone (208) 334-2873 or toll free 888-249-7025

Questions regarding accidents occurring on the job or workers compensation benefits should be addressed to:

Idaho Industrial Commission
317 W. Main Street
Boise, ID 83720
Phone (208) 334-6000 or toll free 800-950-2110

Questions regarding unemployment compensation and tax coverage should be addressed to your local Idaho Commerce & Labor office.

FARM LABOR CONTRACTOR LICENSING

A farm labor contractor is any individual or business entity that for money or other compensation recruits, solicits, hires, employs, furnishes or transports migrant or seasonal farm workers.

Farm labor contractors must: (1) be licensed by Idaho Commerce & Labor and pay an annual licensing fee; (2) post a surety bond to cover unpaid wages; (3) carry auto insurance for all vehicles used in the farm labor contracting business; (4) carry workers' compensation coverage for all employees; and (5) provide all employees at the time of hiring full disclosure about the conditions of employment, including the rate of pay, the benefits to be furnished by the farm labor contractor, and all expenses that may be deducted from the farm worker's wages.

Some farm labor contractors are exempt from the requirements of Idaho's Farm Labor Contractor Licensing Law. Because exemptions are narrowly defined, a farm labor contractor should carefully review the exemptions contained in *Idaho Code §44-1602*.

Farmers who use an Idaho Commerce & Labor licensed farm labor contractor will not be jointly liable under Idaho law for any wages left unpaid by a farm labor contractor. The licensed farm labor contractor will remain the farm workers' employer and will be solely responsible for the payment of their wages.